



# Employer Breeze

MT Dept of Labor & Industry

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Serving Park, Sweet Grass and Meagher Counties

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It's that time of the year again. Holiday office parties will be held to celebrate the season, employees' hard work and to build morale. Employers, however, may end up with a headache that will last much longer than the day after the party.

What happens if an employee slips and falls after having had too much to drink? Or, what if that same employee drives home and gets into a car wreck, injuring themselves and occupants of the other vehicle?

What about an over zealous supervisor who corners an assistant to show their "appreciation", or a co-worker who catches a fellow co-worker under the mistletoe?

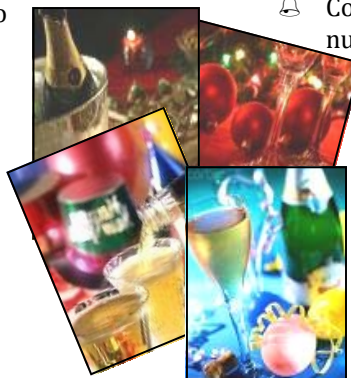
Worker's compensation and sexual harassment come to mind the quickest, but what else might an employer be liable for? Employers may be held liable for the acts of employees during parties. If an employee has had too much to drink, drives and ends up in a wreck that injures the employee as well as others, the employer could be held liable.

What can be done to prevent this from happening, other than not having any holiday parties at all? Here are some ideas to incorporate into your party:

Make attendance at the holiday party voluntary. It's the compelled nature of attendance—that

the perception of compelled attendance—that could subject the employer to Worker's compensation for injuries occurring at the party.

- Hold the party outside of the office during non-working hours, and avoid handing out bonuses or work related awards during the party.
- Take appropriate steps to avoid potential sexual harassment claims arising out of the holiday party. Remind employees that the company's sexual harassment policies will be in full force and effect during the holiday party.
- If alcohol is going to be served, consider punches or other drinks with low alcohol content, and make sure there are plenty of non-alcoholic alternatives available for consumption.
- Make sure food is served at the party. Foods rich in starch and protein tend to stay in the stomach longer and assist with absorption of alcohol in the bloodstream.
- Consider using cash bars or limiting the number of free drinks per person.
- If an employer elects an open bar and mixed drinks, use professional bartenders to serve alcohol. Have them cut off service to intoxicated party goers.
- Cut off alcohol service at least half an hour to an hour before the party ends.



Have alternative transportation for those who shouldn't drive. Consider either paying for cabs for inebriated partygoers, or have cabs or rides from designated drivers available.

While the temptation may be just to hand out frozen turkeys to avoid possible liabilities, employers can throw a festive party and avoid some of the common pitfalls.

From October 2008 information (*preliminary data)	MT	U.S.
Unemployment rate/Non-seasonally adjusted	4.3*	6.1*
Area Unemployment Rates	2007	2008
Gallatin	2.0	3.7*
Meagher	3.7	5.4*
Park	2.6	4.0*
Sweet Grass	1.5	2.3*

*As you all know, under Montana's Wrongful Discharge from Employment Act (WDEA), you can be found liable for wrongful discharge if you fire somebody in violation of your own written personnel policies. One policy that usually causes trouble for employers is a progressive discipline policy. A Bozeman car dealer's progressive discipline policy recently cost it \$60,000.*

## Facts

Rob Hager was hired in March 1985 to manage the Billion Auto Body shop in Bozeman. In 2004, management of the shop was divided between Hager, who became the sales manager, and Keith Stone, who became production manager. Hager was given a document listing his job responsibilities, which included growing sales, keeping customers happy, and maintaining profitability.

In his first review after receiving his new job description, Hager was ranked "F" on his performance. He was reassigned from sales manager to "body shop estimator," and his monthly salary was reduced from \$6,000 to \$3,000. Shortly afterward, Hager resigned and found a new job with a recreational vehicle company. He also filed a lawsuit against Billion alleging it violated the WDEA.

## Handbook provisions

Settlement talks failed, and the case went to trial. Hager pointed to the company handbook in his testimony, in particular a section covering what happened when an employee violated work rules:

The following progressive disciplinary action shall normally be taken:

- (1) First occasion — Verbal warning, or if more serious, a written warning may be immediately given.
- (2) Second occasion — Written warning (if not given on first occurrence).
- (3) Third occasion — Discharge.

The handbook went on to warn employees that the step after a written warning was discharge, and if an offense was serious, "the verbal warning step may be skipped." Hager claimed that he had never received a verbal or a written warning before he was demoted and his wages cut.

Company owner Joe Billion testified that he had evaluated Hager and discussed his job responsibilities with him. He said he demoted Hager because of his bad attitude and because he had violated work rules.

Before the jurors began to deliberate, the judge told them about the law of wrongful discharge in Montana. In his instructions, he noted that discharge could be wrongful if "the employer violated the express provisions of its own written personnel policy." The jury returned a verdict for Hager and

awarded him \$60,000 in damages. Billion appealed to the Montana Supreme Court.

## Supreme court's decision

Billion argued two issues to the supreme court. First, it contended that the jury shouldn't have been allowed to consider the employee handbook. The company also argued that its handbook didn't require it to follow progressive discipline before demoting someone.

Hager responded that the demotion was really a discharge and was therefore subject to the progressive discipline policy. The supreme court agreed with him, noting that the company owner claimed Hager had violated work rules and the handbook required some process under those circumstances. Thus, the jury had been properly advised of the law.

Second, Billion argued that there was no evidence indicating that Hager lost any wages. The company maintained that since he didn't provide his tax returns or W-2 forms, there was no basis for his wage claim. The court made short work of that argument as well. It was enough that Hager had testified about his annual salary while he was employed at Billion as well as his current salary at his new job. *Hager v. J.C. Billion, Inc.*, \_\_ Mont. \_\_, 2008 MT 167 (May 13, 2008).

## Practical application

Because of the WDEA's language making a discharge wrongful if it violates an employer's written policies, we generally counsel employers not to have specific discipline policies in handbooks or other written documents. Inevitably, a situation will arise in which you don't follow the handbook provisions, and although the termination may be justified, it will be deemed a wrongful discharge because you didn't follow your own policies.

What kind of policies should you have? Keep your discipline policies very general, and allow management the discretion to decide whether and what kind of discipline is appropriate.

Note also that the employer cut the employee's pay in half in this case. The court apparently viewed that drastic reduction in compensation as a "constructive discharge" without any discussion. A constructive discharge occurs when the employer makes work conditions so intolerable that no reasonable person would be expected to endure them. Demoting someone and cutting his pay in half can be seen as creating intolerable working conditions.

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## New Form I-9

The newest version of the Form I-9 has an expiration date of June 30, 2009, so employers need to be careful to make sure they are using the correct form. A copy of the correct form is included in this newsletter for your convenience. If you run out of forms, you may download this form at: <http://www.uscis.gov/files/form/I-9.pdf>.

Watch next summer for updated forms with a new expiration date.

## New 2009 W-4 Form

With the start of the new year comes the need for updated yearly tax forms. To get the new 2009 W-4 form, download it at the IRS website at <http://www.irs.gov/>

You may also go to <http://www.mt.gov/revenue/formsandresources/forms.asp#withholding> for a variety of Montana downloadable tax forms for business & individuals.

## Soft Skills Training for Managers, Employees, and Students Offered by the Livingston Job Service

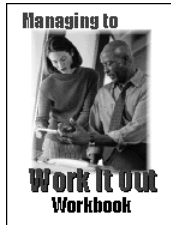
The Livingston Job Service is pleased to announce the availability of Soft Skills Trainings for everyone in the community. In the past we have presented Workin' It Out to students, TANF recipients, and the general public, to include some local area employers. We now have specialized Workin' It Out sessions to give better and more relevant information to each group.

In **Managing to Work it Out**, which is geared for Supervisors and Managers, the goal as outlined in the program is to:

- 1) Understand the differences in perspectives between ourselves and our employees.
- 2) Recognize how underlying beliefs and biases affect the way we deal with employee problems.
- 3) Learn a structured way to solve employee problems one step at a time.
- 4) Sharpen communication skills that will help us through tough situations with employees.

This will be a great program for any manager or supervisor to attend but would be especially useful for someone new in the management area.

Zanya Betley and I presented the regular Workin' it Out series to the High School Construction class last year and, while we felt it was beneficial to them, we realized that the story lines given were suited to those who are out of school and into the workforce full-time. We then asked to be trained in the Beginning to Work it Out series which deals with storylines of High School students. The goals of **Beginning to Work it Out** are:



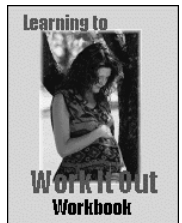
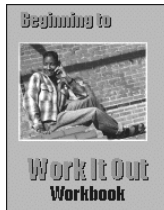
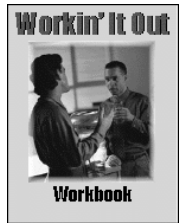
- 1) Improve our awareness of how our beliefs, thoughts and feelings affect the problems we have.
- 2) Improve our ability to stop and think when upset and to deal with feelings without making problems worse.
- 3) Learn to successfully solve problems related to getting and keeping good jobs.

The goals of **Workin' it Out** closely resemble the goals of Beginning to Work it Out, with a slight difference of learning to successfully solve problems in the workplace rather than getting and keeping good jobs.

A fourth series that we present is called **Learning to Work it Out**. It deals with situations that are common for some of the people we work with; people dealing with addictions, literacy problems and/or no GED. The goals of this program are very similar to the other programs but this improves the awareness of a person's resources in helping them to overcome their challenges and reach their goals.

All the programs allow the participant to learn the steps in successfully handling conflict, from realizing what the conflict cycle is and how our personal beliefs affect our reactions to situations, to learning what our warning signs are and how to express our thoughts without making the situation worse.

Call Elizabeth or Zanya at 222-0520 to schedule your Workin it Out session today.



## Can't, or won't, hire employees based on criminal record, bad credit or substance abuse issues?

### How about if they were bonded?

The Federal Bonding Program; a unique job placement tool. Bond coverage is provided for any person whose background usually leads employers to question their honesty and deny them a job. The program will cover any person who is a "risk" due to their being in one or more of the following groups:

- Ex-offender with a record of arrest, conviction or imprisonment; anyone who has ever been on parole or probation, or has any police record
- Recovering substance abusers; persons rehabilitated through treatment for alcohol or drug abuse
- Poor credit record or have declared bankruptcy
- Dishonorably discharged from the military
- Persons lacking a work history who are from families with low income.

Anyone who needs the program's bond in order to get a job can be bonded. Only the Federal Bonding Program will issue bonds to employers to cover anyone who is usually NOT BONDABLE. As a result, bonding is eliminated as a barrier to employment and the program serves as a unique job placement tool.

The key purpose of the program's bond is to help an at-risk applicant get a job. The bond insurance is issued free of

charge to the employer for a period of six months. If the worker demonstrates job honesty during the six months of Federal Bonding Program coverage, that worker can become BONDABLE FOR LIFE under commercial bonding made available to the employer for purchase from the Travelers Property Casualty insurance company.

Issuance of the bond for job placement to occur can be requested by either the employer or the job applicant. For the bond to be issued, the employer must make the applicant a job offer and set a date for the individual to start work. The job start date will be the effective date of the bond insurance which will terminate six months later. After the six months, continued coverage will be made available for purchase if the worker has exhibited job honesty under the program's bond. The bond is for \$5,000 with NONDEDUCTIBLE amount of liability for the employer.

About 40,000 applicants have obtained jobs due to being bonded and 99% have proven to be honest employees.

If you would like more information about the Federal Bonding Program, or would like to get a bond for a future employee, call us at 222-0520 for more information.

*Happy Holidays from the  
Staff at Livingston Job Service:*

*Elizabeth Baker  
Gail Habener  
Jean Modesette*



*Zanya Betley  
Susan Hanken  
Skip Shiver*

*And our Illustrious Leaders  
Joyce Heiser-Mngr  
Tom Frisby-Reg Dir*

PRESORTED STANDARD

Livingston Job Service  
220 East Park Street  
Livingston, MT 59047

## **Livingston and “The Economy”**

by Joyce Heiser

Even if it's not your first choice as a topic of conversation, it's most likely lurking in the back of your mind with a big question mark. What's going on and how is it affecting our community, our jobs and our families? Have we noticed changes in our local labor market and what can we expect? Let me start by sharing some statistics with you. I know—it's “just numbers”! They are helpful and give a quick snapshot of what's happening in our state.

### **Unemployment Rates**

The current national unemployment rate is 6.5% (Oct. 2008); 6.1% in September. Traditionally, “normal” unemployment rate ranges between 4.0% and 5.5%. Nationally, Montana had the 10th lowest unemployment rate in the country at 4.4% in September (South Dakota lowest at 3.3%; Michigan highest at 8.9%).

Statewide, Montana ranges from a low of 2.1% in Sweet Grass County to a high of 6.6% in Sanders County. Park, Fergus, Jefferson, and Phillips County all come in at 3.5%, ranking 27th out of the 56 Montana counties. Overall, Montana is 3rd in the nation for job growth—5.9% from January through August 2008. That's a bright note! Job growth is just part of the picture. The national economic woes also affect us: some jobs are cut or hours reduced. Change is a very real part of our local economic picture.

### **Local Picture**

In addition to our usual changes when tourist season slows down, we do see some effects of the national economic challenges:

- Larger pool of potential employees available
- Shorter turn-around time from advertising a position to hiring
- Affected industries in our communities include financial services, construction firms—skilled workers and laborers, as well as our retail markets
- More people contacting Job Service; more interest in new careers & retraining
- Increased demand for access to unemployment insurance benefits

With all the publicity, none of this is truly news to any of us. One thing that is consistent whether we're in a “bull or a bear” economy is that the skilled and professional staff members of Job Service are here to help in whatever way we can.

### **HERE ARE SOME OF SERVICES AVAILABLE TO YOU**

#### **Free Advertising!**

Maximize your recruitment efforts by taking advantage of our job posting, matching and referral services. Our database of potential employees includes over 1,000 people, ranging from new job seekers looking for entry level work to skilled professionals looking for the next step in an already established career path. We'll be happy to search for and refer people who meet your requirements.

Remember—listing your vacant positions with Job Service is a no-cost service available to you as a benefit from the taxes you already pay. Check out our job listings in the classified section of the *Livingston Enterprise* (Tuesdays) and in the *Livingston Weekly*. In addition to the personal attention provided by our trained Workforce Consultants, we feature your positions on our website: <http://wsd.dli.mt.gov/local/livingston/>. We maintain our website locally and customize it to provide heightened service to our community. Over 17,500 people visited our website last month!

#### **Recruitment Tips**

Need some information on wage trends or typical job descriptions? Perhaps some help screening applications, developing interview questions or maybe just a quiet place to conduct interviews? We're a one-stop shop to help with these and other questions.

#### **Workforce Services**

In tough economic times, it makes sense to operate as efficiently as possible. We have many resources to help with common workplace concerns, including a variety of training materials. Our Workforce Consultants network with other professionals, community organizations and service providers. If we don't have the answer at our fingertips, we may be able to find it or connect you to someone who does. Our consultants work with job seekers to help them improve their skills and refer them to jobs that match their current skills, interests and abilities. We manage training programs that help people upgrade their skills, enhancing their value as an employee.

**The Business Expansion and Retention (BEAR) program** specializes in helping businesses continue to grow and improve profitability. Professional services and resources available cover a wide range of topics, including: Business Plans, Financing & Capital, Facilities & Expansion, Education & Training, Business/Employee Management, Marketing, Manufacturing, Technology & Web and much more.

**Incumbent Worker Training Program**—a two-year pilot program to help employers fund existing employee training needs, now in the second year. This training can meet a variety of business needs—upgrade skills to enhance productivity, efficiency & profitability; reduce employee turnover; develop skills to remain competitive. Funds are still available, so contact us for more information.

**Job Service—Our name says it all: Service**

Our primary purpose is to develop and maintain a high quality workforce system for the state of Montana that supports and enhances the economic health of the business community as well as to provide a prepared workforce. Let us know what you need, ask us questions, visit our local website, call or come in to see us. More information on labor market, employment trends, wages and a wealth of material is available at the Research and Analysis Bureau website: <http://ourfactsyourfuture.mt.gov/>.

### Upcoming Training Opportunity

## How to Create a Recession Proof Marketing Plan

Sponsored by Livingston JSEC

According to Entrepreneur Magazine Radio, Tom Egelhoff is this nation's leading authority on how to do business in small towns and small markets.

For more than 35 years, Tom's workshops and seminars have helped thousands of small town business owners become more profitable and successful.

Tom is an inspiring, motivational and entertaining business and sales trainer with a light hearted humorous style, focusing on personalized, do-it -yourself, low-cost marketing, advertising and promotional techniques for small business owners.



Tuesday, January 13, 2009  
Livingston Public Library Community Room

Two sessions: 8:00 a.m.—Noon  
1:00 p.m. – 5:00 p.m.

Cost \$59.00

More than one staff member attending the workshop? Additional  
Business employees pay \$44.00 each  
JSEC Members free



Participation includes complementary book: *How to Market, Advertise and Promote Your Business or Service in a Small Town*

Department of Homeland Security  
U.S. Citizenship and Immigration Services

# Form I-9, Employment Eligibility Verification

Please read instructions carefully before completing this form. The instructions must be available during completion of this form.

**ANTI-DISCRIMINATION NOTICE:** It is illegal to discriminate against work eligible individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

## Section 1. Employee Information and Verification.

Print Name: Last		First	Middle Initial	Maiden Name
Address (Street Name and Number)			Apt. #	Date of Birth (month/day/year)
City		State	Zip Code	Social Security #
<b>I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.</b>		I attest, under penalty of perjury, that I am (check one of the following): <input type="checkbox"/> A citizen or national of the United States <input type="checkbox"/> A lawful permanent resident (Alien #) A _____ <input type="checkbox"/> An alien authorized to work until _____ (Alien # or Admission #) _____		

Employee's Signature	Date (month/day/year)
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**Preparer and/or Translator Certification.** (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature	Print Name
Address (Street Name and Number, City, State, Zip Code)	
Date (month/day/year)	

## Section 2. Employer Review and Verification.

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____

**CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) \_\_\_\_\_ and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment.)**

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name and Address (Street Name and Number, City, State, Zip Code)		Date (month/day/year)

## Section 3. Updating and Reverification.

A. New Name (if applicable)		B. Date of Rehire (month/day/year) (if applicable)
C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility.		
Document Title: _____	Document #: _____	Expiration Date (if any): _____
<b>I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.</b>		
Signature of Employer or Authorized Representative		Date (month/day/year)

## LISTS OF ACCEPTABLE DOCUMENTS

LIST A	LIST B	LIST C
Documents that Establish Both Identity and Employment Eligibility	Documents that Establish Identity	Documents that Establish Employment Eligibility
OR AND		
1. U.S. Passport (unexpired or expired)	1. Driver's license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address	1. U.S. Social Security card issued by the Social Security Administration (other than a card stating it is not valid for employment)
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)	2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address	2. Certification of Birth Abroad issued by the Department of State (Form FS-545 or Form DS-1350)
3. An unexpired foreign passport with a temporary I-551 stamp	3. School ID card with a photograph	3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal
4. An unexpired Employment Authorization Document that contains a photograph (Form I-766, I-688, I-688A, I-688B)	4. Voter's registration card	4. Native American tribal document
	5. U.S. Military card or draft record	5. U.S. Citizen ID Card (Form I-197)
5. An unexpired foreign passport with an unexpired Arrival-Departure Record, Form I-94, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, if that status authorizes the alien to work for the employer	6. Military dependent's ID card	6. ID Card for use of Resident Citizen in the United States (Form I-179)
	7. U.S. Coast Guard Merchant Mariner Card	
	8. Native American tribal document	7. Unexpired employment authorization document issued by DHS (other than those listed under List A)
	9. Driver's license issued by a Canadian government authority	
	For persons under age 18 who are unable to present a document listed above:	
	10. School record or report card	
	11. Clinic, doctor or hospital record	
	12. Day-care or nursery school record	

**Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)**